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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

APPEAL BRIEF TRANSMITTAL & PETITION FOR EXTENSION OF TIME		Docket Number: 10191/821	Conf. No. 9214
Application Number 09/166,496	Filing Date October 5, 1998	Examiner Brian J. BROADHEAD	Art Unit 3661
Invention Title CONTROL DEVICE FOR A SYSTEM, AND METHOD FOR OPERATING THE CONTROL DEVICE		Inventor Holger BELMANN et al.	

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Date: December 29, 2006 Reg. No. 36,197

Signature: _____
Jong H. Lee

Further to the Notice of Appeal dated August 31, 2006 for the above-referenced application, enclosed are three copies of an Appeal Brief. A two-month extension of time for filing the Appeal Brief is requested.

The Commissioner is hereby authorized to charge payment of the 37 C.F.R. § 41.20(b)(2) appeal brief filing fee of **$500**, as well as the **$450** fee for the extension of time, and any additional fees associated with this communication, to the deposit account of **Kenyon & Kenyon LLP**, deposit account number **11–0600**.

(R. No. 36,197)

Dated: December 29, 2006

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[10191/821]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Inventors	:	Holger BELLMANN et al.
Serial No.	:	09/166.496
Filing Date	:	October 5, 1998
For	:	CONTROL DEVICE FOR A SYSTEM, AND METHOD FOR OPERATING THE CONTROL DEVICE
Group Art Unit	:	3661
Examiner	:	Brian J. BROADHEAD
Confirmation No.	:	9214

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APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

S I R :

Applicants filed a Notice of Appeal dated August 31, 2006, appealing from the Final Office Action dated March 1, 2006, in which claims 1, 3, 12 and 14 of the above-identified application were finally rejected. This Brief is submitted by Applicants in support of their appeal.

I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH of Stuttgart, Germany. Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

II. RELATED APPEALS AND INTERFERENCES

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist to the undersigned attorney or is believed by the undersigned attorney to be known to exist to Applicants.

III. STATUS OF CLAIMS

Claims 2, 4-11, 13 and 15-20 have been allowed. Claims 1, 3, 12 and 14 are finally rejected and under consideration in the present appeal. Among the appealed claims, claims 1 and 12 are independent; claim 3 depends on claim 1; and 14 depends on claim 12.

IV. STATUS OF AMENDMENTS

A "Rule 116 Amendment" was mailed on July 31, 2006, in response to the final Office Action mailed on March 1, 2006. In the Rule 116 Amendment, claims 2, 4, 5, 7, 13, 15 and 16 were amended to be in independent form. The Examiner indicated in the 8/22/06 Advisory Action that the Rule 116 Amendment will be entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

With respect to independent claim 1, the present invention provides a control device (Fig. 1 – device 1) for controlling a system (Fig. 1 – system 2), which control device includes:

a plurality of activatable modules (Fig. 1 – modules 10), each of the activatable modules having a respective corresponding priority value (Figs. 2, 3, 4 – priority p); (Specification, p. 2, l. 25-26; p. 4, l. 30-31);

a scheduler (Fig. 1 – element 11) activating the activatable modules (10) as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules, the activated modules generating data by analyzing states of the system (2); (p. 3, l. 14-16 & 24-30; p. 4, l. 31 – p. 5, l. 2; p. 7, l. 12-16); and

a priority manager (Fig. 1 – element 12) continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules. (Figs. 2, 3, 4; p. 5, l. 5-20; p. 6, l. 7 – p. 7, l. 10).

With respect to independent claim 12, the present invention provides a method for operating a control device (Fig. 1 – device 1) which controls a system (Fig. 1 – system 2), the control device including a plurality of activatable modules (Fig. 1 – modules 10), which method includes the steps of:

assigning a respective corresponding priority value (Figs. 2, 3, 4 – priority p) to each of the activatable modules; (Specification, p. 2, l. 25-26; p. 4, l. 30-31);

activating the activatable modules (10) as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules; (p. 3, l. 14-16; p. 4, l. 31 – p. 5, l. 2; p. 7, l. 12-16);

with the activated modules, generating data by observing states of the system (2); (p. 3, l. 24-30); and

continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules. (Figs. 2, 3, 4; p. 5, l. 5-20; p. 6, l. 7 – p. 7, l. 10).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following ground of rejection is presented for review on appeal in this case:

(A) Whether pending claims 1, 3, 12 and 14 are anticipated under 35 U.S.C. § 102(b) by U.S. Patent 4,642,756 ("Sherrod").

VII. ARGUMENTS

A. Rejection of Claims 1, 3, 12 and 14 under 35 U.S.C. § 102(b)

Claims 1, 3, 12 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 4,642,756 ("Sherrod"). Applicants respectfully submit that the Sherrod reference does not anticipate claims 1, 3, 12 and 14 for at least the following reasons.

To anticipate a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim limitation is *identically disclosed* in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). "The identical invention must be shown in as complete detail as is contained in the claim." M.P.E.P. § 2131. If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). To the extent that the Examiner may be relying on the doctrine of inherent disclosure to support the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Independent claim 1 recites, in relevant parts, the following: "A control device for controlling a system, comprising . . . ***a scheduler*** activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules, ***the activated modules generating data by analyzing states of the system***; and ***a priority manager*** continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules." Independent claim 12 recites method limitations corresponding to the above-recited device limitations of claim 1.

In support of the rejection, the Examiner asserts in the final Office Action that col. 4, lines 1 to 8, of the Sherrod reference disclose a plurality of activatable modules with corresponding priority values. However, col. 4, lines 1-8 of Sherrod merely indicate that storage and I/O peripherals 3', as well as user interactive terminal display 4', are connected to CPU 5', thereby allowing the computer system to access storage devices and "communicate with the

outside world." Nothing in this passage, or any other passage, of the Sherrod reference suggests the claimed feature of "***the activated modules generating data by analyzing states of the system***," as recited in claims 1 and 12.

The Examiner further contends in the final Office Action that "a scheduler activating the modules as a function of the corresponding priority values" is taught in col. 3, l. 20-22 of Sherrod, and that "a priority manager modifying the corresponding priority value of at least one of the modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules" is taught in col. 4, lines 35-42 of Sherrod. However, Applicants note that there is no teaching or suggestion in Sherrod regarding the claimed feature of "a priority manager modifying the corresponding priority value of at least one of the modules . . . relative to the priority value of another of the activatable modules." In particular, while the Examiner contends that col. 3, l. 20-22 of Sherrod teaches the claimed "scheduler" and col. 4, l. 35-42 of Sherrod teaches the claimed "priority manager," it is clear that there is no "priority manager" that is distinct from the task schedule 6' disclosed in Sherrod. In this regard, Sherrod clearly indicates that the logic circuit 7' included in the task scheduler 6' "performs all of the logical computations required to establish the order in which the various tasks stored in RAM 1' and ROM 2' . . . are to be executed by CPU 5' based on task priorities." Furthermore, col. 4, l. 35-42 of Sherrod cited by the Examiner merely indicate that: a) there are two priorities, "an internal priority provided from within the task scheduler" and "an external priority assigned by the computer operator or the task itself"; b) the internal priority may change from moment to moment depending on external events, time intervals or input/output operations; and c) the external priorities are only changed when so designated by the computer operator or when the task itself causes a change in external priority. Accordingly, it is quite clear that Sherrod only discloses a "task scheduler" 6', but not a "priority manager" that is distinct from the task schedule 6'. Furthermore, there is no suggestion in Sherrod that the priority value is changed relative to the priority value of another module; instead, the Sherrod reference only states that the internal or external priority changes depending on the computer operator or depending on other events, but not depending on another task and not relative to a priority value of another task.

To the extent the Examiner contends in the Advisory Action that "[i]f a priority of a task is increased it has to be increased relative to the other tasks," this assertion is clearly contradicted by the actual disclosure of Sherrod. With respect to "external priorities" discussed in

Sherrod (and shown in Table 1), it is clear that neither "a scheduler" nor "a priority manager" has any influence on changing the external priorities. Furthermore, with respect to "internal priorities" discussed in Sherrod (and shown in Table 2), the assigned internal priority of a given task depends on the "state" of the task, i.e., a given task may have one of six different internal priority levels corresponding to different task states, which means a change in the internal priority value of a given task according to Sherrod does not necessarily result in a change in the priority of the given task relative to the priority of another task. The mere possibility that a change in the internal priority value of a given task may result in a change in the priority of the given task relative to the priority of another task does not inherently teach the claimed feature of "a priority manager modifying the corresponding priority value of at least one of the modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules," since there is no "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art."

For at least the foregoing reasons, claims 1 and 12, as well as their dependent claims 3 and 14, are allowable over Sherrod.

VIII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the final rejection of claims 1, 3, 12 and 14 should be reversed.

Claims Appendix, Evidence Appendix and Related Proceedings Appendix sections are found in the attached pages.

Respectfully submitted,

KENYON & KENYON LLP

(R. No. 36,197)

Dated: December 29, 2006

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APPENDIX TO APPELLANTS' APPEAL BRIEF UNDER 37 C.F.R. § 41.37

CLAIMS APPENDIX

The claims involved in this appeal, claims 1, 3, 12 and 14, in their current form after entry of all amendments presented during the course of prosecution, are set forth below:

1. A control device for controlling a system, comprising:

a plurality of activatable modules, each of the activatable modules having a respective corresponding priority value;

a scheduler activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules, the activated modules generating data by analyzing states of the system; and

a priority manager continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules.

3. The control device according to claim 1, wherein the priority manager modifies the respective corresponding priorities of activatable modules as a function of the states of the system.

12. A method for operating a control device which controls a system, the control device including a plurality of activatable modules, the method comprising the steps of:

assigning a respective corresponding priority value to each of the activatable modules;

activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules;

with the activated modules, generating data by observing states of the system; and

continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules.

14. The method according to claim 12, wherein the respective corresponding priority value of a particular module of the activatable modules is modified as a function of the states of the system.

EVIDENCE APPENDIX

In the present application, there has been no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132, or other evidence entered by the Examiner and relied upon by Appellants in the present appeal.

RELATED PROCEEDINGS APPENDIX

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist.